

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PATRICK A. BRENNER, II,

Plaintiff,

Case No. 11-13888

v.

HONORABLE AVERN COHN

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

_____ /

ORDER REJECTING REPORT AND RECOMMENDATION (Doc. 16)
AND
DENYING DEFENDANT'S MOTIONS TO DISMISS (Doc. 10)

I.

This is a social security case. On September 7, 2011, plaintiff, who is proceeding pro se, filed this action seeking judicial review of an unfavorable decision regarding his disability benefits. The matter was referred to a magistrate judge for all pretrial proceedings. Defendant, the Commissioner of Social Security (Commissioner), filed a motion to dismiss on the grounds that plaintiff had not filed the complaint within sixty (60) days of the Appeals Council's decision and therefore was barred from judicial review. (Doc. 10). Plaintiff filed a response to the motion. (Doc. 12). On June 27, 2011, the magistrate judge issued a report and recommendation (MJRR) recommending that the Commissioner's motion be granted. It is undisputed that the complaint was filed one (1) day late.

II.

Although plaintiff has not filed objections to the MJRR and the time for filing objections has passed, the Court has reviewed the MJRR. The Court “may accept, reject, or modify the findings and recommendations of the magistrate judge.” 28 U.S.C. § 636(b). As set forth in the MJRR, plaintiff filed the complaint one (1) day late, on September 7, 2011. However, plaintiff attempted to file the complaint the day before, September 6, 2011, but was unable to do so. Under the circumstances set forth in the record, plaintiff is entitled to equitable tolling of the sixty (60) day time limit for seeking judicial review.

Accordingly, the MJRR is REJECTED. The Commissioner’s motion to dismiss is DENIED.

SO ORDERED.

Dated: July 25, 2012

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, July 25, 2012, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160